

## **CHAPTER 59-04**

### **ADMINISTRATION OF TRUSTS**

**59-04-01. Procedure and administration of trusts.** Repealed by S.L. 1973, ch. 257, § 82.

**59-04-02. Commencement of trust proceedings.** Any trustee, beneficiary, or person interested in a trust may file a petition with the clerk of the district court praying that the administration of the trust be supervised. The form of the petition in substance must be as is provided in sections 59-04-03 and 59-04-04 and notice of hearing thereon must be given to interested parties as provided by sections 30.1-03-01 and 30.1-33-06, and any further notice must be given as may be prescribed by court rules. The court, upon hearing, may enter its order that all further proceedings in the supervision of the administration of the trust must be had in that court. The district court serving the county where any portion of the trust property is located, upon petition of any interested person and upon like notice and hearing, may adopt and confirm as the act of that district court any order or decree of a foreign court with respect to the sale, mortgaging, leasing, or other disposition of the real property of a trust within this state. In all cases of public or charitable trusts, the attorney general and the state's attorney of the county where the trust is established are deemed persons interested in the trust estate.

**59-04-03. Form of title in trust administration proceeding.** The caption or title of the petition and of all orders, notices, or other proceedings relating to the supervision of the administration of a trust in district court must be substantially as follows:

In the Matter of the administration by \_\_\_\_\_, trustee, of the trust created by \_\_\_\_\_.

**59-04-04. Requisites of petition.** The petition shall contain all of the following:

1. A statement showing the residence and post-office address of the trustee.
2. A statement as to the time and manner of the creation of the trust, as by will, deed, declaration, or contract.
3. A copy of the instrument creating the trust, recited in or annexed to the petition, and if the instrument is not available to the petitioner, that fact shall be stated.
4. If the fact is known to the petitioner, a statement showing where the original trust instrument is on file, or in whose possession it may be.
5. A statement showing whether the trustee has come into possession of the trust property through distribution under probate proceedings upon a will or through other judicial proceedings.
6. An itemized inventory giving the description, location, and estimated value of all property included in the trust, recited in or annexed to the petition.
7. A statement showing whether such inventory was filed by the trustee or other person interested.
8. The names and post-office addresses of all beneficiaries or persons interested in the trust property so far as known to the petitioner.
9. A statement showing whether the residence or post-office address of any such beneficiary or interested person named in the petition is unknown to the petitioner.
10. A statement as to whether there are or may be beneficiaries or interested persons other than those specifically named who are unknown to the petitioner.

11. Such other and further showing as the petitioner may consider relevant.
12. A prayer for the supervision of the administration of the trust by the district court and for the direction or order of the district court in respect to such other and specific matters as the petition may disclose.
13. Repealed by S.L. 1973, ch. 257, § 82.

**59-04-05. Notice - Service.** Repealed by S.L. 1973, ch. 257, § 82.

**59-04-06. Requisites of notice of hearing.** Repealed by S.L. 1973, ch. 257, § 82.

**59-04-07. Notice of hearing - Form.** Repealed by S.L. 1973, ch. 257, § 82.

**59-04-08. Appearance - Waiver of notice - Admission of service.** The general appearance of any interested person at any hearing in person, by attorney, or by the guardian of a minor or incompetent person renders prior notice to that person unnecessary. Any such person, attorney, or guardian may waive notice of any hearing in the proceeding by written waiver filed with the clerk of the district court. Any such person, guardian, or attorney in the proceedings may admit in writing the due service of any notice in the proceeding. Where jurisdiction is made to depend upon the appearance, waiver, or admission of an attorney, the attorney's authority in writing must be filed with the clerk.

**59-04-09. Proof of service of notice of hearing and order.** Repealed by S.L. 1973, ch. 257, § 82.

**59-04-10. Effect of court orders.** Every order entered in trust proceedings, upon the notice prescribed in section 30.1-03-01, has the force and effect of a judgment. It is subject to appeal as provided by section 59-04-25 and is binding upon all interested persons resident within or without the state, known or unknown, ascertained and in being, or otherwise.

**59-04-11. Representation of minors and incompetents.** A guardian ad litem shall qualify by filing an acceptance of appointment and an oath faithfully to perform the duties of said special guardianship. Such guardian shall represent the ward at the hearing or throughout the whole or any portion of the proceedings, as the court by its order shall direct. The guardian shall not receive for the ward any money, funds, or property unless a good and sufficient bond is furnished and filed in court in an amount ordered and fixed by the court in the order of appointment. Any money, funds, or property so received shall be subject to the further orders of the court as to the disposition and turning over of the same to any guardian or conservator, as the case may be, of any ward or protected person.

**59-04-12. Resident agent.** Repealed by S.L. 1973, ch. 257, § 82.

**59-04-13. Adoption of orders and decrees of foreign courts.** Repealed by S.L. 1973, ch. 257, § 82.

**59-04-14. Bond of trustee.** Repealed by S.L. 1975, ch. 257, § 82.

**59-04-15. Powers and duties of trustee.**

1. Every act of the trustee in contravention of the terms of the trust and statute is absolutely void except when the district court having jurisdiction and supervision of the administration of the trust, by order, on notice and hearing as provided in this chapter, authorizes the trustee to sell, mortgage, pledge, lease, or otherwise dispose of or invest trust property in the manner as best may accomplish the object and purpose of the trust, if it is made to appear to the satisfaction of the court that the order is necessary and for the best interests or benefit of the trust estate or person or persons beneficially interested in the trust estate, or who thereafter may acquire an interest in the trust estate, and if it is further established to the satisfaction of the

court that the trust instrument is lacking in specific and adequate directions as to the disposition or investment of trust property, or that strict compliance with the terms of the instrument will tend to destroy the trust estate or create losses of principal or income.

2. Unless otherwise provided by the terms of the trust or an order in a supervised proceeding, a trustee acting reasonably for the benefit of the beneficiaries may exercise the powers granted to a personal representative under section 30.1-18-15.
3. A trust agreement may grant the powers of section 30.1-18-15, as those powers exist on the date of signing the agreement, to a trustee by a specific reference to section 30.1-18-15 and the powers relating to investment under sections 6-05-15, 6-05-15.1, and 6-05-15.2.

**59-04-16. Hearing may be had on several accounts, reports, or petitions - Order allowing required.** Any number of accounts, reports, or petitions previously filed in the proceeding by the trustee or other interested person may be included in any hearing. No account, report, or petition shall be deemed allowed or adopted unless and until an order is duly entered and filed allowing or approving it.

**59-04-17. Reports of trustee.** The trustee of every trust estate placed under the supervision of the court as is provided in this chapter, within ten days after the entry of the order taking jurisdiction of the estate, shall file with the clerk of court a verified itemized account and report showing in detail the description, location, and value of all assets of the trust estate, the disposition of the assets, the income from the assets after the inception of the trust, and, annually thereafter, the trustee shall file a verified like account and report. The court, at any time and upon its own motion, or upon good cause shown by a petition of any beneficiary, and with or without notice, may require and compel the trustee to file a special itemized account, or report of any acts done, or acts contemplated by the trustee in the disposition or investment of the trust. No account or report may be approved without notice of hearing as is provided by this chapter.

**59-04-18. Removal of trustee.** Upon a verified petition of any interested person, showing upon its face good cause for removal of a trustee, the court shall require the trustee to show cause why the trustee should not be removed. Notice of hearing shall be given as is provided by this chapter. The court on its own motion may remove any trustee and appoint a temporary trustee to take charge of the trust estate and to act as such trustee until the petition for the removal of the trustee has been heard and determined and a new trustee has been appointed to fill any vacancy in the trust or until the proceedings for the removal of the trustee have been concluded.

**59-04-19. Vacancy in trust.** In the event of a vacancy by death, resignation, or removal of a trustee, or if a trustee named in the instrument creating the trust shall not be qualified to administer the trust in this state, or if a vacancy exists in the trusteeship for other cause, the court must appoint a new trustee to fill such vacancy in the manner prescribed in this chapter for the appointment of a trustee in the first instance. In appointing a trustee, so far as practicable, the directions, if any, in the instrument creating the trust shall be followed. The same method shall be followed as to the successor in trust to be appointed. Generally, in the selection and appointment of a trustee, the court should give first consideration to the wishes and selection made by the interested parties or beneficiaries who own, represent, or control, or who have more than a fifty percent beneficial interest in, the trust estate. If three or more trustees are appointed to handle the trust estate, then the minority interest in said estate shall be entitled to the appointment of at least one trustee selected by them, if their combined beneficial interest in the estate amounts to at least twenty percent of the value thereof.

**59-04-20. Vouchers shall accompany account - Exception.** Repealed by S.L. 1991, ch. 695, § 3.

**59-04-21. Expenses and attorney's fees allowed.** The trustee must be allowed all necessary expenses in the care, management, and settlement of the trust estate. The trustee

may pay attorney's fees and costs reasonably necessary in the performance of the trustee's duties.

**59-04-22. Subsequent notice and hearings - Procedure.** No order approving a trustee's account, or directing or approving the disposition or investment of trust property or funds, shall be entered except on hearing after service of notice pursuant to section 30.1-32-03.

**59-04-23. When court order required.** Except as otherwise required by law, no judgment or order of the court shall be necessary to render effective and valid any act of the trustee lawfully performed within the terms of the trust. This chapter is designed to provide a speedy and convenient means of apprising interested persons of the progress of the administration of the trust, to bring the same before the court for direction of the trustee, and to provide for prompt hearing upon the claims and objections of interested persons, and timely and conclusive approval or confirmation of the acts, accounts, and reports of the trustee.

**59-04-24. Correction of mistakes - Relief from default - Copy of record furnished.** Any person interested in the trust estate may file written objections to any account, report, or petition of the trustee before or at the time of the hearing and may present proof and evidence in support thereof. Any order made by the court in the proceeding may be modified or vacated to correct clerical errors or mistakes of calculation apparent on the face of the records, either by the court on its own motion or with or without notice. Within six months after the entry of any order, the district court may relieve any interested person from the order when it has been taken against the person through that person's mistake, inadvertence, surprise, excusable neglect, or default therein, upon fifteen days' notice to the opposite party as prescribed by the terms of section 59-04-22. Whenever any person interested in the trust estate has been served with any notice of any proceeding based upon any petition, report, accounting, or other record required to be filed under the terms of this chapter, that person may demand a copy thereof and it must be furnished forthwith and mailed or served on the interested party demanding it, free of charge, by the trustee or any other party commencing the proceeding.

**59-04-25. Appeals.** Any trustee, beneficiary, or person interested in the trust feeling aggrieved by any order of the district court made in the proceedings may appeal from the same or any part thereof to the supreme court within six months after the filing of the order with the clerk of the district court. The appeal must be taken in the manner, and upon the record and notice, provided by the terms of this chapter, and a single appeal may include any number of orders made appealable by this section.

**59-04-26. Appeal - How taken.** Within the time prescribed by this chapter, any interested person may take an appeal to the supreme court from any order or orders entered by the district court, by the service of a notice of appeal and by filing the same with a return or affidavit of service or admission thereof, together with a bond for costs in the sum of two hundred fifty dollars, with the clerk of the district court. The bond for costs must be executed by the appellant, with the sureties to be approved by the clerk of the district court, and must be conditioned to the effect that the appellant will pay to the parties entitled thereto all costs that may be awarded against the appellant upon such appeal.

**59-04-27. Stay of proceedings.** Upon the perfecting of an appeal in the manner prescribed in section 59-04-26, no further proceedings under the order or orders appealed from may be taken pending the appeal, unless the district court or supreme court may direct otherwise upon hearing, and upon such notice thereof as the court by order may prescribe. The court may prescribe the terms and conditions of a supersedeas bond, deposit, or other act in lieu thereof. Otherwise no bond may be required, except the cost bond in the sum of two hundred fifty dollars, to stay all proceedings from the date of the filing of the notice of appeal together with the undertaking on appeal and the service thereof.

**59-04-28. Notice of appeal.** The notice of appeal shall specify the order, or orders, or parts thereof, from which the appeal is taken, and shall be subscribed by the party taking the appeal, as appellant, or by the party's attorney. Such notice shall be served on each of the other parties, or their attorneys, who shall have appeared at the hearing or hearings at which the order

or orders from which appeal is taken shall have been entered, and such parties shall be named in the notice as respondents. Service of the notice of appeal may be made personally upon, or by registered or certified mail by mailing copies thereof to, the respondents or their attorneys.

**59-04-29. Procedure on appeal.** The procedure on appeal to the supreme court and for certification of the record and the form of assignment of errors is, insofar as applicable, and except as herein otherwise provided, as now provided by the statute for appeals in cases properly triable by the court without a jury in which an issue of fact has been joined. If no testimony was taken by the court reporter at the hearing on which the order or orders appealed from was entered, the original records and files of the district court used upon the hearing, with the original notice of appeal and undertaking, must be attached together and certified by the clerk of court and constitute the record for the purposes of appeal. The time for procuring a transcript of evidence for appeal commences to run from the date of the entry of the order from which the appeal is taken.

**59-04-30. Transmission of record - Briefs.** Within thirty days after the taking of an appeal when no transcript of testimony is to be included in the record, and within thirty days after certification of the record when a transcript is included, the clerk shall transmit the record and briefs to the supreme court. The parties shall serve and file their briefs on appeal as provided by law and by the rules of the supreme court. However, the court may enlarge the time, upon proper showing, within which any act is to be performed to perfect the record, but the court shall have no power to extend the time within which the appeal must be taken.

**59-04-31. Demand for change of judge - Disqualification of judge.** Any judge of the district court before whom a proceeding for the supervision of the administration of a trust has been commenced as is provided by this chapter may be disqualified to act as such judge at any time thereafter by the filing of a demand for change of judge with the clerk of the court, as is provided in title 29, by any person interested in the trust estate who owns or controls a beneficial interest therein amounting to twenty-five percent or more in value of the estate. The procedure upon the filing of the demand in other respects must conform to the procedure upon the filing of a demand for change of judge prescribed in title 29.